

BRIAN R. STRANGE (SBN 103252)
lacounsel@earthlink.net
GRETCHEN CARPENTER (SBN 180525)
gcarpenter@strangeandcarpenter.com
STRANGE & CARPENTER
12100 Wilshire Blvd., Suite 1900
Los Angeles, CA 90025
Telephone: 310-207-5055
Fax: 310-826-3210

RANDALL S. ROTHSCHILD (SBN 101301)
randy.rothschild@verizon.net
RANDALL S. ROTHSCHILD, A.P.C.
12100 Wilshire Blvd., Suite 800
Los Angeles, CA 90025
Telephone: 310-806-9245
Fax: 310-988-2723

Attorneys for Plaintiffs Vivian Fiori and Roggie Trujillo

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

VIVIAN FIORI and ROGGIE TRUJILLO, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

DELL INC., a corporation; BANCTEC, INC.,
a corporation; QUALXSERV LLC, an entity;
DELL CATALOG SALES, L.P., an entity;
DELL PRODUCTS, L.P., an entity; DELL
MARKETING L.P., an entity; DELL
MARKETING L.P., LLC, an entity; DELL
MARKETING G.P., LLC, an entity; DELL
USA, L.P., an entity; and DOES 1 Through
10,

Defendants.

Case No. C09 01518 JW

**SECOND AMENDED COMPLAINT
FOR:**

1. **VIOLATION OF THE SONG-
BEVERLY CONSUMER
WARRANTY ACT,
CALIFORNIA CIVIL CODE §§
1790, et seq.**
2. **VIOLATION OF THE
CONSUMERS LEGAL
REMEDIES ACT, CALIFORNIA
CIVIL CODE §§ 1750, et seq.**
3. **VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS
CODE §§ 17500, et seq.**
4. **VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS
CODE §§ 17200, et seq.**

DEMAND FOR JURY TRIAL

CLASS ACTION

Assigned to the Honorable James Ware

Action filed on April 7, 2009

1 Plaintiffs Vivian Fiori and Roggie Trujillo, on behalf of themselves and all other similarly
2 situated persons in the State of California, allege as follows:

3 **NATURE OF THE CASE**

4 1. This suit concerns Defendants' deceptive business practice of secretly charging
5 Dell customers for onsite repair service for the first year after they purchased their Dell
6 computers. Because the hidden charges are never disclosed – except in Defendants' internal
7 invoicing which is never shown to the customer -- customers are completely unaware they have
8 paid for an onsite service contract they never knew they were purchasing, let alone consent to
9 buying.

10 2. This case is brought as a California-only class action on behalf of California
11 consumers based upon service contracts that were sold here for services to be performed solely in
12 California by Defendants' employees located here. California is also where all the injuries in
13 issue took place.

14 3. Class action treatment is appropriate as this matter involves a scheme to
15 deliberately cheat large numbers of consumers out of individually small sums of money through
16 a uniform course of conduct involving standardized business practices, common material
17 omissions, and substantially identical pre-preprinted form documentation. Plaintiffs are
18 informed and believe and thereon allege that the individual sums in issue are typically in the
19 range of \$60-\$120, the exact amount being in the exclusive knowledge of the Defendants.

20 **JURISDICTION**

21 4. This Court has subject matter jurisdiction under the Class Action Fairness Act of
22 2005, 28 U.S.C. § 1332(d), because members of the proposed California statewide Class are
23 citizens of California, a different state from Defendants, which are incorporated and have
24 principal places of business in Texas, Delaware or Massachusetts. The aggregate amount in
25 controversy exceeds \$5,000,000. Furthermore, Defendants Dell Inc.; Banctec, Inc.; QualxServ
26 LLC; Dell Catalog Sales, L.P.; Dell Products, L.P.; Dell Marketing, L.P.; Dell Marketing L.P.,
27 LLC; Dell Marketing G.P., LLC; and Dell USA, L.P. (hereafter “**Defendants**”) have
28 purposefully availed themselves of the benefits and protections of this District and/or have had

1 sufficient contacts with this District such that maintenance of the action in this locale is
2 consistent with traditional notions of fair play and substantial justice.

3 **INTRA-DISTRICT ASSIGNMENT**

4 5. Pursuant to Civil Local Rule 3-2(c), this case is assigned to the San Jose Division
5 of this Court, as San Benito County is the residence of the Plaintiffs and where a substantial part
6 of the events or omissions which give rise to Plaintiffs' claims occurred.

7 **PARTIES**

8 6. Plaintiff Vivian Fiori and Plaintiff Roggie Trujillo are residents of San Benito
9 County, California, and were residents of California at the time they purchased the goods and
10 services in issue through the time of filing this action.

11 7. Plaintiffs are informed and believe and thereon allege that defendant Dell Inc. is a
12 corporation organized under the laws of the State of Delaware, with its principal place of
13 business in Round Rock, Texas, and was formerly known as "Dell Computer Corporation." Dell
14 Inc. is engaged in the business of manufacturing, marketing, selling, retailing, maintaining,
15 repairing, servicing, and providing support for computer systems and computer products. Dell
16 Inc. is also engaged in the business of making, marketing, selling, and retailing service contracts
17 for the repair of Dell computers, including the ones involved in this case. In addition, Dell Inc. is
18 engaged in the business of repairing, servicing, and providing support for onsite warranty repair
19 services to purchasers of Dell computer systems, including the onsite warranty repair services at
20 issue in this case.

21 8. Plaintiffs are informed and believe and thereon allege that defendants Dell
22 Catalog Sales, L.P.; Dell Products, L.P.; Dell Marketing, L.P.; Dell Marketing L.P., LLC; Dell
23 Marketing G.P., LLC; and Dell USA, L.P. are wholly-owned subsidiaries and/or affiliates
24 through which Dell Inc. conducts its business. Dell Inc. and the foregoing Dell defendants have
25 been or are the principals, agents, employees, representatives, partners, joint venturers and/or
26 co-conspirators of each other and, in such capacity or capacities, participated in the acts or
27 conduct alleged herein and incurred liability therefor. Further, Plaintiffs are informed and
28 believe and thereon allege that Defendants Dell Catalog Sales, L.P.; Dell Products, L.P.; Dell

1 Marketing, L.P.; Dell Marketing L.P., LLC; Dell Marketing G.P., LLC; and Dell USA, L.P. are,
2 and at all times herein mentioned were, the alter egos of Defendant Dell Inc., and there exists,
3 and at all times herein mentioned has existed, a unity of interest and ownership between such
4 Dell defendants and Dell Inc. such that any separateness between them has ceased to exist, in that
5 Defendant Dell Inc. completely controls, dominates, manages, and operates Dell Catalog Sales,
6 L.P.; Dell Products, L.P.; Dell Marketing, L.P.; Dell Marketing L.P., LLC; Dell Marketing G.P.,
7 LLC; and Dell USA, L.P. to the detriment of Plaintiffs and class members. Adherence to the
8 fiction of the existence of Dell Catalog Sales, L.P.; Dell Products, L.P.; Dell Marketing, L.P.;
9 Dell Marketing L.P., LLC; Dell Marketing G.P., LLC; and Dell USA, L.P. as entities separate
10 and distinct from Dell Inc. would permit an abuse of corporate privileges and would sanction a
11 fraud and promote injustice.

12 9. Collectively, all of the Dell defendants will hereafter be referred to as “**Dell**” or
13 “**Dell Defendants.**” Thus, “**Dell**” or “**Dell Defendants**” includes Dell Inc.; Dell Catalog Sales,
14 L.P.; Dell Products, L.P.; Dell Marketing, L.P.; Dell Marketing L.P., LLC; Dell Marketing G.P.,
15 LLC; and Dell USA, L.P.

16 10. Plaintiffs are informed and believe and thereon allege that defendant Banctec, Inc.
17 (“**Banctec**”) is a corporation organized under the laws of the State of Delaware with its principal
18 place of business located in Irving, Texas. Banctec is engaged in the making, marketing, selling,
19 and retailing of service contracts for the repair of Dell computers. Banctec is also engaged in the
20 business of repairing, servicing, and providing support for onsite warranty repair services to
21 purchasers of Dell computer systems, including the onsite warranty repair services at issue in this
22 case. Further, Banctec, along with Dell and defendant Qualxserv LLC, sells service contracts to
23 California residents for the repair of Dell computers, including the ones involved in this case, and
24 Banctec provides onsite repair services to Dell customers in California through its employees
25 who are located here.

26 11. Plaintiffs are informed and believe and thereon allege that defendant QualxServ
27 LLC (“**Qualxserv**”) is a limited liability company organized under the laws of the State of
28 Delaware with its principal place of business located in Tewksbury, Massachusetts. Qualxserv is

1 engaged in the making, marketing, selling, and retailing of service contracts for the repair of Dell
2 computers. Qualxserv is also engaged in the business of repairing, servicing, and providing
3 support for onsite warranty repair services to purchasers of Dell computer systems, including the
4 onsite warranty repair services at issue in this case. Further, Qualxserv, along with Dell and
5 Banctec, sells service contracts to California residents for the repair of Dell computers, including
6 the ones involved in this case, and Qualxserv provides onsite repair services to Dell customers in
7 California through its employees who are located here.

8 12. Plaintiffs are informed and believe and thereon allege that with respect to the
9 claims asserted herein, each of the Defendants has been or is the principal, agent, employee,
10 representative, partner, joint venturer and/or co-conspirator of each of the other Defendants and
11 in such capacity or capacities participated in the acts or conduct alleged herein and incurred
12 liability therefor. Further, at all times relevant hereto, each of the Defendants has been or is the
13 agent, partner and/or joint venturer of each other Defendant with respect to the making,
14 marketing, selling, maintaining, repairing, servicing, and providing warranty services, parts and
15 labor to purchasers of Dell computer systems, including the onsite warranty repair services at
16 issue. Each Defendant derived, accepted and retained monetary profits and benefits from the sale
17 of the service contracts in issue. Further, each of the Defendants acted for and on behalf of each
18 other Defendant with respect to the service contracts, with actual and apparent authority to act,
19 and did so within the course and scope of their agency, partnership, joint venture and/or
20 authority. With regard to the specific warranties, representations and agreements alleged herein,
21 each was made with the knowledge, consent, authorization, ratification and approval of each of
22 the Defendants.

23 13. More specifically, Banctec and Qualxserv participated in and profited from all of
24 the business practices and policies alleged herein with full knowledge of the facts, and were fully
25 aware of the material omissions and business practices and policies in issue which were
26 committed on their behalf as well as on behalf of Dell.

27 14. The true names and capacities, whether individual, corporate, associate or
28 otherwise, of Defendant Does 1-10, inclusive, are unknown to Plaintiffs, who therefore sue such

1 Defendants by such fictitious names. Plaintiffs will amend this Complaint to show such
2 Defendants' true names or capacities when the same have been ascertained. Plaintiffs are
3 informed and believe and thereon allege that each of said fictitious named Defendants is
4 responsible in some manner for the occurrences herein alleged.

5 **California Regulation**

6 15. The service contracts that are the subject of this dispute were all sold in California
7 to California residents for use in California on Dell computers located here. As such, the service
8 contracts in issue, as well as any onsite repair services performed thereunder, are statutorily
9 regulated by the State of California through Business and Professions Code §§ 9800, *et seq.*, the
10 Song-Beverly Act (Civil Code §§ 1790, *et seq.*), and Title 16 of the California Code of
11 Regulations, Division 27. Further, Defendants, as sellers of the service contracts as well as being
12 providers of repair services, are regulated in California by the Bureau of Electronic and
13 Appliance Repair as "service dealers" pursuant to § 9801(f) of the California Business and
14 Professions Code, as "service contract sellers" or "sellers" pursuant to subsection c of § 9855 of
15 that Code, as well as "service contractors" pursuant to § 9855(e). Plaintiffs are informed and
16 believe and thereon allege that as sellers of service contracts and providers of repair services in
17 California, Defendants are required to be registered with the State of California, and that
18 Defendants are either presently registered or have been in the past.

19 **GENERAL ALLEGATIONS**

20 **Defendants' Common Practice**

21 16. Dell sells desktop and laptop computers directly to consumers through its website
22 as well as over the telephone through its sales representatives. Independent and separate from its
23 computers, Dell, on behalf of itself and all Defendants, also sells and markets onsite warranty
24 repair services via service contracts to Dell computer customers. Dell broadly advertises both its
25 computers and service contracts throughout California to California consumers through various
26 media, including Dell's website, mail order catalogs, newspapers, television and the Internet.

27 17. Dell, on behalf of itself and all Defendants, advertises and represents that warranty
28 repairs for Dell computers are made onsite for the first year after purchase. As a matter of

1 business policy and practice common to all their customers, including Plaintiffs and class
2 members, Defendants secretly charge Dell customers for this first year onsite repair service
3 without the customer's knowledge or informed consent. This charge is hidden from the customer
4 and never disclosed by Defendants either prior to, at the time of, or after the sale of a Dell
5 computer.

6 18. Further, Defendants' standard policy is that the service contracts for the first year
7 after purchase are optional and do not have to be bought by the customer. However, in
8 furtherance of their scheme to deceive, Defendants never disclose this standard policy or option
9 to the customer prior to, at the time of, or after the sale of a Dell computer. As a result, the
10 customers are completely unaware they are being charged for the first year onsite repair service,
11 or even that they had the option not to be charged in the first place.

12 19. Also in furtherance of the scheme, Defendants memorialize every computer sale
13 in writing by way of a standard Invoice or Acknowledgment (see example attached as Exhibits 1-
14 2). These Invoices are sent to Dell customers after they purchase a computer as a matter of
15 Defendants' standard business practice. The Invoices do not list a charge for the first year
16 service contract, nor do they disclose that the customer has been charged for a first year onsite
17 service contract. In contrast, as a matter of Defendants' standard business practice, the charge for
18 the service contract is clearly and conspicuously listed in Defendants' internal invoicing that is
19 never shown to the customer.

20 20. Similarly, Defendants, as a matter of standard business practice, make available to
21 Dell customers a copy of their standard service contract that, again, fails to disclose that there
22 was any charge for the service contract or for the onsite repair service.

23 21. Plaintiffs are informed and believe and thereon allege that Defendants charge the
24 customer somewhere between \$60 to \$120 for this onsite service for the first year, the exact
25 amount being in the exclusive knowledge of Defendants. The fact that there is a charge for the
26 first year onsite service contract and such charge is optional, is in the exclusive knowledge of
27 Defendants which Defendants suppress and conceal from customers, including Plaintiffs.

28 ///

1 22. Aiding in their scheme is the fact that Defendants do disclose that the customer
2 has the option to buy extended service contracts for additional years of onsite warranty repair
3 service beyond the first year, and the fact that Defendants do itemize and specify the charges for
4 the additional years of onsite service or extended service contracts. Plaintiffs allege that this
5 charge ranged from approximately \$60-\$120 per year during the relevant period. The end result
6 of Defendants' partial representations of some material facts and suppression of others is that
7 Defendants create the false impression in the customer, and misled their customers into
8 believing, that there is no charge for their first year onsite warranty repair service.

9 23. Given the foregoing practices and policies, buyers of Dell computers, as
10 reasonable consumers, reasonably believe there is no charge for first year onsite warranty repair
11 service. As buyers and reasonable consumers, customers purchasing Dell computers, including
12 Plaintiffs and class members, would reasonably expect that if Defendants, as sellers, imposed a
13 charge for the first year onsite repair service, such a cost would be clearly and conspicuously
14 disclosed to buyers before or at the time of sale. This is especially true given the fact that
15 Defendants disclose that service contracts beyond the first year are optional and the fact
16 Defendants disclose the costs for service contracts beyond the first year to their customers.

17 24. In addition, as buyers and reasonable consumers, customers purchasing Dell
18 computers, including Plaintiffs and class members, would reasonably expect that if they had the
19 option and choice whether or not to purchase onsite repair service for the first year, Defendants,
20 as sellers, would clearly and conspicuously disclose this option to them before or at the time of
21 sale. Taken together, customers purchasing Dell computers, including Plaintiffs and class
22 members, would reasonably expect that if a charge existed for the first year onsite repair service,
23 Defendants would clearly and conspicuously disclose to them the full details of the charge, as
24 well as disclose to them their option and choice whether to incur the extra charge or not.

25 **Uniform Omissions and Standard Documentation**

26 25. Defendants' policy and standard business practices as alleged herein are common
27 to all Dell customers, including Plaintiffs and class members. Further, Defendants made the
28 same uniform omissions and lack of disclosures to all Dell customers, including Plaintiffs and

1 class members, and irrespective of whether the customers purchased their computers at Dell's
2 website or over the telephone from Dell's sales representatives. Defendants' uniform omissions
3 were material in inducing Plaintiffs and class members to incur, without their knowledge or
4 consent, charges for their first year onsite repair service through the unintentional purchase of a
5 service contract.

6 26. In addition, Defendants provided Dell customers, including Plaintiffs and class
7 members, with the same or substantially the same uniform standard documentation, including
8 substantially identical form invoices and pre-printed form service contracts. Defendants drafted
9 all sales documentation, and are in a superior bargaining position from their customers, including
10 Plaintiffs and class members. Customers, including Plaintiffs and class members, have no input
11 or ability to negotiate any of the terms of these "take it or leave it" form adhesion documents.
12 Further, Defendants unilaterally insert unfair terms in their form documents, such as class action
13 bans and Texas choice of law provisions, for the distinct purpose of trying to immunize
14 themselves from any material liability so that they will be free to engage in their wrongful
15 conduct to substantially increase profits without any real consequences.

16 **Defendants' Motives**

17 27. Plaintiffs are informed and believe and thereon allege that the reason Defendants
18 engage in the deceptive acts alleged herein is to allow them to substantially increase sales of Dell
19 computers and increase profits. Plaintiffs are informed and believe and thereon allege that, since
20 Dell has no retail outlets, Defendants believe that if they did not provide their customers with
21 onsite repair service for the first year after purchase, they would be at a substantial competitive
22 disadvantage to box-store retailers such as Best Buy which offer their customer the convenience
23 of returning a broken computer to any store for warranty service. Defendants attempt to
24 counteract this advantage by offering to come to a customer's home to fix their computer if it is
25 broken but, to maintain high profits, they force the customer to secretly pay for this service
26 option. Without the onsite repair service, Dell customers would be forced to package-up their
27 computer and mail it to a Dell repair facility for warranty repair.

28 ///

1 28. Plaintiffs are also informed and believe and thereon allege that Defendants believe
2 that if they did not conceal the charge for this onsite service, Defendants fear that potential
3 customers would find it more attractive to purchase their computers at a store where warranty
4 repair options are both free and more convenient, rather than pay a premium price for
5 Defendants' promise to fix their Dell computers onsite at some time in the future. Plaintiffs are
6 also informed and believe and thereon allege that sales of service contracts are a high profit
7 margin business for Defendants which provides them further incentive for the scheme.

8 **Fiori Service Contract**

9 29. On or around September 5, 2003, Plaintiff Vivian Fiori purchased a Dell computer
10 for her personal, family and household use through Dell's website, and did use the computer for
11 her personal, family and household use. She selected the computer she wanted from among
12 various different choices presented on the Dell website. According to the written representations
13 and advertising Defendants made on the website, which Plaintiff Fiori read before making her
14 computer purchase, warranty repairs for her computer would be made onsite for the first year
15 after purchase.

16 30. Plaintiff Fiori was provided no option to delete or eliminate the first year onsite
17 repair service. Further, Defendants made no disclosure on the website that there was any charge
18 or cost associated with the first year onsite repair service. Nor was there any disclosure on the
19 website giving Plaintiff the option of just purchasing the computer without the onsite repair
20 service for a lesser price. In contrast, Defendants did disclose to Plaintiff through their website
21 and advertising that she had the option to purchase, for a specified, itemized amount, additional
22 years of onsite service beyond the first year.

23 31. Based on the foregoing, and as a reasonable consumer, Plaintiff reasonably
24 concluded there was no charge for the first year onsite repair service. Plaintiff reasonably
25 expected that if there was a charge for the first year onsite service, Defendants would clearly
26 disclose this cost prior to or at the time of the sale. Further, Plaintiff reasonably expected that if
27 there was a charge or cost associated with the onsite service for the first year of purchase,
28 Defendants would have provided an option prior to or at the time of the sale for Plaintiff to

1 purchase the computer without the onsite service. This is especially true given the fact that
2 Defendants disclosed that service contracts for onsite warranty repair service beyond the first
3 year were optional and the fact Defendants disclosed and itemized the costs of such service
4 contracts beyond the first year.

5 32. Relying upon the foregoing lack of disclosures, and not knowing that there
6 actually was a charge for the onsite service, Plaintiff made her purchase of the computer through
7 Dell's website on or about September 5, 2003. She did this with a credit card payment that
8 Defendants immediately accepted.

9 33. Defendants, pursuant to their standard business practice, sent Plaintiff Fiori a
10 written Acknowledgment Invoice dated September 12, 2003 memorializing her purchase. (A
11 true and correct redacted copy of the front of this Invoice is attached hereto as Exhibit 1.) The
12 Invoice, pursuant to Defendants' standard business practice, did not list a price for the initial, or
13 first year, onsite repair service, and did not indicate anywhere that she had been charged the price
14 for a service contract. Further, and also pursuant to Defendants' established business practice,
15 nowhere on the Invoice did Defendants disclose to Plaintiff that there was a charge for her first
16 year onsite repair service or that Defendants had actually charged Plaintiff for the cost of a
17 service contract. Nor did Defendants disclose to Plaintiff anywhere on the Invoice that she had
18 the option to purchase the computer without incurring a charge for the onsite repair service and
19 service contract.

20 34. Plaintiff is also informed and believes and thereon alleges that, pursuant to
21 Defendants' standard business practice, Defendants made available to her a pre-printed form
22 service contract for the onsite service. As with the Invoice, Plaintiff is informed and believes and
23 thereon alleges that nowhere on the form did Defendants disclose there was any charge for the
24 first year onsite service or that Plaintiff had the option not to have this onsite service for the first
25 year after purchase.

26 35. Within the year before filing this action, Plaintiff Fiori discovered, as a result of
27 an unrelated legal proceeding, that Defendants had secretly charged her for onsite warranty repair
28 service during the first year after purchase through the undisclosed sale of a service contract to

1 her. Defendants concealed and suppressed the true facts from Plaintiff and never disclosed them
2 to Plaintiff before or after her computer purchase took place. Plaintiff Fiori had no knowledge
3 that she was charged for onsite service through a service contract, and never agreed or consented
4 to this charge.

5 36. If Defendants had disclosed the charge for the first year onsite repair service and
6 service contract prior to or at the time of sale, Plaintiff Fiori would have been aware of it, would
7 have acted differently, and would not have purchased the onsite service through the purchase of a
8 service contract. Likewise, if Defendants had disclosed to her prior to or at the time of sale that
9 the onsite service costs extra money and that she had the option not to purchase it, Plaintiff Fiori
10 would have been aware of it, would have acted differently, and would have chosen the option not
11 to have the onsite service and service contract for the first year.

12 37. Plaintiff is informed and believes and thereon alleges that the cost of the first year
13 onsite repair service and service contract that she unwittingly purchased without her consent
14 ranged from approximately \$60 to \$120. The exact cost of the first year onsite service is within
15 Defendants' exclusive knowledge and was unknown to Plaintiffs prior to the onset of this
16 litigation.

17 **Trujillo Service Contract**

18 38. On or around March 23, 2004, Plaintiff Vivian Fiori purchased through Dell's
19 website another Dell computer, this time on behalf of her mother, Plaintiff Roggie Trujillo, for
20 her mother's personal, family and household use in California. Plaintiff Trujillo delegated to her
21 daughter, as her agent for purposes of buying the computer, full authority and discretion to buy
22 the same type or substantially similar computer as her daughter had purchased the prior year.
23 Plaintiff Trujillo wanted the computer for her personal, family and household use, and Plaintiff
24 Trujillo did use the computer for her personal, family and household use. Prior to and at the time
25 of the purchase of her mother's computer in March, 2004 ("**the Trujillo computer**"), neither
26 Plaintiff Fiori nor Plaintiff Trujillo were aware that Defendants secretly charge customers for a
27 first year service contract as part of the transaction. If they had known about the charge, they
28 would have chosen not to purchase the service contract.

1 39. On behalf of her mother, Plaintiff Fiori selected the same type of computer she
2 had previously purchased for herself from among the various choices presented on Dell's
3 website. According to the written representations and advertising Defendants made on the
4 website, which Plaintiff Fiori read before making the purchase of the Trujillo computer, warranty
5 repairs for the computer would be made onsite for the first year after purchase.

6 40. In purchasing the Trujillo computer, Plaintiff Fiori was provided no option to
7 delete or eliminate the first year onsite repair service. Further, Defendants made no disclosure on
8 the website that there was any charge or cost associated with the first year onsite repair service.
9 Nor was there any disclosure on the website giving Plaintiffs the option of just purchasing the
10 computer without the onsite repair service for a lesser price. In contrast, Defendants did disclose
11 to Plaintiffs through their website and advertising that they had the option to purchase, for a
12 specified, itemized amount, additional years of onsite service beyond the first year.

13 41. Based on the foregoing, and as a reasonable consumer, Plaintiff Fiori, on behalf of
14 herself and her mother, reasonably concluded there was no charge for the first year of onsite
15 repair service for the Trujillo computer. Plaintiffs reasonably expected that if there was a charge
16 for the first year onsite service, Defendants would clearly disclose this cost prior to or at the time
17 of the sale. Further, Plaintiffs reasonably expected that if there was a charge or cost associated
18 with the onsite service for the first year of purchase, Defendants would provide an option prior to
19 or at the time of the sale for Plaintiffs to purchase the computer without the onsite service. This
20 is especially true given the fact that Defendants disclosed that service contracts for onsite
21 warranty repair service beyond the first year were optional and the fact Defendants disclosed and
22 itemized the costs of such service contracts beyond the first year.

23 42. Relying upon the foregoing lack of disclosures, and not knowing that there
24 actually was a charge for the onsite service, Plaintiff Fiori, on behalf of her mother, purchased the
25 Trujillo computer through Dell's website on or about March 23, 2004, and paid for it with
26 Plaintiff Fiori's credit card. Defendants accepted payment immediately. Plaintiff Fiori was
27 subsequently reimbursed by her mother for the cost of the Trujillo computer.

28 ///

1 43. Defendants, pursuant to their standard business practice, sent a written
2 Acknowledgment Invoice dated April 9, 2004 memorializing the purchase of the Trujillo
3 computer. (A true and correct redacted copy of the front of the Invoice is attached hereto as
4 Exhibit 2.) The Invoice, pursuant to Defendants' standard business practice, did not list a price
5 for the initial, or first year, onsite repair service, and did not indicate anywhere that the customer
6 had been charged the price for a service contract. Further, and also pursuant to Defendants'
7 established business practice, nowhere on the Invoice did Defendants disclose that there was a
8 charge for her first year onsite repair service or that Defendants had actually charged for the cost
9 of a service contract. Nor did Defendants disclose anywhere on the Invoice that the customer had
10 the option to purchase the computer without incurring a charge for the onsite repair service and
11 service contract.

12 44. Plaintiffs are also informed and believe and thereon allege that, pursuant to
13 Defendants' standard business practice, Defendants made available a pre-printed form service
14 contract for the onsite service. As with the Invoice, Plaintiffs are informed and believe and
15 thereon allege that nowhere on the form did Defendants disclose there was any charge for the
16 first year onsite service or that the customer had the option not to have this onsite service and
17 save herself the cost of the service.

18 45. Within the year before filing this action, Plaintiff Trujillo, as did Plaintiff Fiori,
19 discovered, as a result of an unrelated legal proceeding, that Defendants had secretly charged for
20 the first year onsite warranty repair service for the Trujillo computer. Defendants concealed and
21 suppressed the true facts from Plaintiffs and never disclosed them to Plaintiffs before or after the
22 Trujillo computer purchase took place. Neither Plaintiff Trujillo nor Plaintiff Fiori had any
23 knowledge that they were being charged for onsite service for the Trujillo computer through a
24 service contract, and neither Plaintiff ever agreed or consented to this charge.

25 46. If Defendants had disclosed to Plaintiffs prior to or at the time of sale that there
26 was a charge for the first year onsite repair service and service contract, Plaintiffs would have
27 been aware of it, would have acted differently, and would not have purchased the onsite service.
28 Likewise, if Defendants had disclosed to Plaintiffs prior to or at the time of the sale of the

1 Trujillo computer that the onsite service costs extra money and that they had the option not to
2 purchase it, Plaintiffs would have been aware of it, would have acted differently, and would have
3 chosen the option not to have the onsite service and service contract for the first year.

4 47. Plaintiffs are informed and believe and thereon allege that the cost of the first year
5 onsite repair service that they unknowingly purchased for the Trujillo computer without their
6 knowledge or informed consent, ranged from approximately \$60 to \$120. The exact cost of the
7 first year onsite service is within Defendants' exclusive knowledge and was unknown to
8 Plaintiffs prior to the onset of this litigation.

9 **Duty to Disclose**

10 48. Defendants had a duty to disclose based upon their exclusive knowledge of the
11 material facts alleged above which were unknown to Dell customers, including Plaintiffs, and
12 which they could not reasonably discovery; namely, that the first year onsite service contracts
13 were optional and that the Defendants secretly charged their customers for the cost of the first year
14 service contracts. Defendants failed to disclose these material facts to their customers, including
15 Plaintiffs, and instead concealed and suppressed such material facts as a matter of business policy
16 and practice. Further, Defendants' act in disclosing and itemizing the cost of their onsite service
17 contracts beyond the first year as well as disclosing that these onsite contracts beyond the first
18 year were optional while, at the same time, concealing and suppressing these same material facts
19 for the first year onsite service contracts, created a false impression in their customers, including
20 Plaintiffs, that there were no optional charges associated with the first year onsite service
21 contracts. Defendants' acts in making a partial representation of material facts while
22 simultaneously suppressing other material facts created a duty to disclose all material facts,
23 including the suppressed and concealed ones.

24 49. Besides the foregoing, Defendants were also required under the consumer
25 protection statutes alleged herein to disclose that their first year onsite service contracts were
26 optional, and that they charged their customers for them. These statutory requirements are
27 detailed more fully below but include the following: (1) the Song Beverly Consumer Warranty
28 Act, California Civil Code §§ 1790, *et seq.*, which requires all material terms, conditions and

1 exclusions of the service contracts to be clearly and conspicuously disclosed in simple and readily
 2 understood language; (2) the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et*
 3 *seq.*, which requires that a seller of goods and services such as those at issue here, may not
 4 represent that goods or services have characteristics or benefits which they do not have, may not
 5 advertise goods or services with an intent not to sell them as advertised or represent that a
 6 transaction confers or involves rights or obligations which it does not have, and may not represent
 7 a repair service is needed when it is not; and (3) the Unfair Competition Law, California Business
 8 & Professions Code §§ 17200, *et seq.*, and the False Advertising Law, California Business &
 9 Professions Code §§ 17500, *et seq.*, which make actionable any business act, practice or
 10 advertising which is likely to mislead or deceive the public.

11 50. In engaging in the acts and conduct alleged herein, Defendants violated their
 12 various duties to disclose owing to Dell customers, including to Plaintiffs.

13 CLASS ACTION ALLEGATIONS

14 51. Plaintiffs bring this action on behalf of themselves and all others similarly situated
 15 as representatives of the following class:

16 All individuals in the State of California who purchased a Dell desktop
 17 or notebook computer system and who also received the right to have
 18 onsite warranty repair service during the first year after purchase.
 Excluded from the class are employees of Defendants, their officers,
 directors, subsidiaries and affiliates (the "Class").

19 52. This action has been brought and may properly be maintained as a class action,
 20 satisfying the numerosity, commonality, typicality, adequacy, and superiority requirements of
 21 Rule 23 of the Federal Rules of Civil Procedure.

22 53. Members of the Class are so numerous that joinder of all members is
 23 impracticable. Plaintiffs do not know the exact size of the Class since such information is in the
 24 exclusive control of Defendants. The exact numbers, however, may be determined by appropriate
 25 discovery. Plaintiffs believe that the Class members number at least in the thousands.

26 54. There are questions of fact and law common to the Class which common questions
 27 predominate over any questions affecting only individual members. Those common questions
 28 include whether Defendants engaged in the following conduct and whether such conduct is

1 improper and wrongful:

- 2 A. Charging Plaintiffs and plaintiff Class members for onsite warranty repair
- 3 service through the undisclosed sale of a service contract without their
- 4 knowledge or consent.
- 5 B. Failing to clearly and conspicuously disclose to Plaintiffs and plaintiff
- 6 Class members prior to, at the time of, and after the purchase of their Dell
- 7 computers that they were being charged for the cost of their first year onsite
- 8 warranty repair service through the undisclosed sale of a service contract.
- 9 C. Failing to clearly and conspicuously disclose to Plaintiffs and plaintiff
- 10 Class members prior to, at the time of, and after the purchase of their Dell
- 11 computers that they had the option not to incur the cost of their first year
- 12 onsite warranty repair service and service contract.
- 13 D. Carrying out a scheme designed to deliberately cheat large numbers of
- 14 persons out of individually small sums of money.

15 55. The claims of the Representative Plaintiffs are typical of the claims of the Class as

16 all members of the Class are similarly affected by Defendants' wrongful conduct.

17 56. The Representative Plaintiffs will fairly and adequately represent and protect the

18 interests of the Class. They have no interests that conflict with or are antagonistic to the interests

19 of the Class. The Representative Plaintiffs have retained experienced and competent attorneys

20 who are experienced in class action litigation and who will fairly and adequately protect the

21 interests of the Class.

22 57. All Class members have the same legal rights to, and interest in, the subject matter

23 of this action, which are substantially similar, if not identical, for Plaintiffs and plaintiff Class

24 members.

25 58. The class action is an appropriate method for fair and efficient adjudication of the

26 controversy given the following:

- 27 A. Common questions of law and/or fact predominate over any individual
- 28 questions that may arise, such that there would be enormous economies to

the courts and the parties in litigating the common issues on a classwide, instead of a repetitive individual, basis;

B. Class members' individual damage claims are too small to make individual litigation an economically viable alternative;

C. Despite the relatively small size of individual Class members' claims, their aggregate volume, coupled with the economies of scale inherent in litigating similar claims on a common basis, will enable this case to be litigated as a class action on a cost-effective basis, especially when compared with repetitive individual litigation; and

D. No unusual difficulties are likely to be encountered in the management of this class action in that all or substantially all questions of law and fact to be litigated are common to the Class.

59. Class certification is fair and efficient as well because prosecution of separate actions would create a risk of adjudications with respect to individual members of the Class, which as a practical matter, may be dispositive of the interests of others members not parties to the adjudication or substantially impair or impede their ability to protect their interests. In addition, Defendants have acted or refused to act on grounds generally applicable to all members of the Class, thereby making final injunctive relief concerning the Class as a whole appropriate.

FIRST CAUSE OF ACTION

FOR VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT, CALIFORNIA CIVIL CODE §§ 1790, *et seq.*

(Plaintiffs, on Behalf of Themselves and All Class Members, Against All Defendants)

60. Plaintiffs reallege and incorporate by reference paragraphs 1-59 above into this claim for relief with the same force and effect as though these paragraphs were set forth at length herein.

61. Every service contract sold to a consumer in California for services to be rendered in this State is controlled and governed by the Song-Beverly Consumer Warranty Act, California Civil Code §§ 1790, *et seq.*, including § 1794.41(a). Any waiver of a buyer of a service contract

1 of consumer goods falling under this Act is contrary to public policy and is unenforceable and
2 void under Civil Code § 1790.1.

3 62. Plaintiffs and plaintiff Class members are “buyers,” and the computers in issue are
4 “consumer goods” and “home electronic products” as these terms are defined under California
5 Civil Code § 1791. At all times herein alleged, Dell is a “manufacturer” and each Defendant is a
6 “retail seller,” “seller” and/or “retailer” as those terms are defined in California Civil Code §
7 1791. The onsite service repair contracts at issue are “service contracts” as defined in California
8 Civil Code § 1791, as well as a “service contract covering a home electronic product” as those
9 terms are used in California Civil Code § 1794.41. Further, pursuant to § 9855 of the California
10 Business and Professions Code, each of the Defendants is a “service contract seller or seller” and
11 “service contractor” as those terms are defined in subsections c and e, and the onsite service repair
12 contracts at issue are “service contracts” as defined in § 9855(a). As a result, the provisions of §§
13 1794.4 and 1794.41 of the Song-Beverly Consumer Warranty Act also apply to Defendants
14 pursuant to Business and Professions Code § 9855.5.

15 63. In doing the acts alleged above, Defendants have carried out a scheme designed to
16 deliberately cheat large numbers of consumers out of individually small sums of money. In
17 furtherance of this scheme, Defendants breached § 1794.41(a)(1) of the Song-Beverly Consumer
18 Warranty Act by, among other things, failing to comply with the requirements and disclosures of
19 subsection (a) of section 1794.4 in failing to fully and conspicuously disclose the charges for the
20 onsite repair service and service contract in issue, and that this onsite service and service contract
21 were optional. In addition, Defendants violated § 1794.4(c)(5)(I) by failing to accurately and
22 completely disclose all “fees, charges, and other costs that the buyer must pay to obtain service.”

23 64. Plaintiffs and Class members have been damaged by Defendants’ failure to comply
24 with their obligations under the Song-Beverly Consumer Warranty Act with respect to their
25 service contracts.

26 65. As a proximate result of Defendants’ actions, Plaintiffs and members of the
27 plaintiff Class have suffered substantial monetary and non-monetary damage and are entitled to
28 injunctive relief to stop the offensive practices in issue as well as damages for all monies

1 unknowingly paid for the onsite repair service plus all applicable civil penalties and attorneys'
 2 fees and costs pursuant to Civil Code § 1794.

3 **SECOND CAUSE OF ACTION**

4 **FOR VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT,**

5 **CALIFORNIA CIVIL CODE §§ 1750, *et seq.***

6 **(Plaintiffs, on Behalf of Themselves and All Class Members, Against All Defendants**

7 66. Plaintiffs reallege and incorporate by reference paragraphs 1-59 above into this
 8 claim for relief with the same force and effect as though these paragraphs were set forth at length
 9 herein.

10 67. This cause of action is brought on behalf of Plaintiffs and Class members pursuant
 11 to the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.* (the "CLRA"). The
 12 CLRA applies to Defendants' actions and conduct described herein. Any waiver by Plaintiffs and
 13 Class members of the provisions of the CLRA is contrary to public policy and is unenforceable
 14 and void under Civil Code § 1751.

15 68. Plaintiffs and Class members bought Dell computers primarily for personal,
 16 family, or household use and are thus "consumers" within the meaning of California Civil Code §
 17 1761(d). The computers that Plaintiffs and each member of the plaintiff Class bought are "goods"
 18 within the meaning of California Civil Code § 1761(a), and the onsite repair service and service
 19 contract in issue is a "service" within the meaning of California Civil Code § 1761(b). This
 20 matter, involving the purchase of Dell computers and the unknowing purchase of service
 21 contracts, constitutes a "transaction" within the meaning of California Civil Code § 1761(e).

22 69. In doing the acts alleged herein, Defendants have carried out a scheme designed to
 23 deliberately cheat large numbers of consumers out of individually small sums of money. In
 24 furtherance of this scheme, Defendants engaged in a number of proscribed practices under § 1770
 25 of the CLRA, namely § 1770(a)(5), (9), (14) and (15). These provisions proscribe as follows:

- 26 (a) The following unfair methods of competition and unfair or deceptive acts
 27 or practices undertaken by any person in a transaction intended to result or
 28 which results in the sale or lease of goods or services to any consumer are
 unlawful:

- 1 (5) Representing that goods or services have ... characteristics, ... [or]
2 benefits ... which they do not have ...
- 3 (9) Advertising goods or services with intent not to sell them as
4 advertised. ...
- 5 (14) Representing that a transaction confers or involves rights, remedies,
6 or obligations which it does not have or involve, or which are
7 prohibited by law. ...
- 8 (15) Representing that a part, replacement, or repair service is needed
9 when it is not.

10 70. Defendants' material omissions in failing to disclose their charges to Plaintiffs and
11 Class members for their first year onsite service and service contract, and their failure to disclose
12 the customers' option not to have the onsite service and service contract in the first place as more
13 fully alleged above, is a violation of the CLRA and breach of the proscribed practices described
14 above. Further, these acts were likely to mislead the members of the public and reasonable
15 consumers, including Plaintiffs and plaintiff Class members, and did mislead members of the
16 public and reasonable consumers, including Plaintiffs and plaintiff Class members.

17 71. Plaintiffs and Class members request that this Court enjoin Defendants from
18 continuing to employ the unlawful methods, acts and practices alleged above, pursuant to
19 California Civil Code § 1780(a)(2). Unless Defendants are permanently enjoined from continuing
20 to engage in such violations of the CLRA, current and future consumers of Defendants' products
21 will be affected in the same way as have Plaintiffs and members of the Class.

22 72. Further, as a direct and proximate result of the above-described deceptive
23 practices, Plaintiffs and Class members have sustained damages in an amount to be proven at trial.

24 73. Defendants' deceptive practices were also directed to Class members who are
25 senior citizens and disabled persons, as defined in California Civil Code § 1761(f) and (g), who
26 are substantially more vulnerable to Defendants' conduct than other members of the public and
27 who actually suffered economic damage resulting from Defendants' conduct, and are therefore
28 entitled to additional statutory damages pursuant to California Civil Code § 1780(b).

74. As a further result of Defendants' conduct alleged above, and because Defendants
are guilty of fraud, malice, and/or oppression, Plaintiffs and Class members are entitled not only

1 to damages as set forth above, but also to exemplary and punitive damages in a sum not presently
 2 known, but sufficient for the sake of example and by way of deterring Defendants and others from
 3 further such actions.

4 75. On April 7, 2009, Plaintiffs provided Defendants with written notice of their
 5 claims and the Class's claims, via U.S. certified mail, return receipt requested, and demanded that,
 6 within 30 days, Defendants correct, repair, replace or otherwise rectify the deceptive practices
 7 complained of herein for the entire Class pursuant to California Civil Code § 1770. Defendants
 8 failed to do so or agree to do so. Therefore, Plaintiffs now seek damages for such deceptive
 9 practices pursuant to California Civil Code Section 1782.

10 **THIRD CAUSE OF ACTION**

11 **FOR FALSE AND MISLEADING ADVERTISING IN VIOLATION OF** 12 **CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17500, *et seq.***

13 **(Plaintiffs, on Behalf of Themselves and All Class Members, Against All Defendants**

14 76. Plaintiffs reallege and incorporate by reference paragraphs 1-59 above into this
 15 claim for relief with the same force and effect as though these paragraphs were set forth at length
 16 herein.

17 77. Dell computers are broadly advertised to California consumers through various
 18 media, including through Dell's website, mail order catalogs, newspapers, television and the
 19 Internet. Defendants, with full knowledge that there is a charge for first year onsite service repair
 20 and that this service is optional, intentionally and deceptively misled consumers, including
 21 Plaintiffs and Class members, into believing that there was no charge for first year onsite service
 22 through their advertising and statements, including their invoices and service contracts. The
 23 advertising and statements fail to disclose all material and relevant information, namely, that there
 24 was a charge for the onsite service for the first year of ownership, and that this onsite service,
 25 which is sold through a service contract, was optional and customers had the choice not to buy it.

26 78. Defendants' advertisements and statements were likely to deceive or mislead or
 27 had the capacity, likelihood or tendency to deceive or confuse the consuming public, including
 28 Plaintiffs and Class members. As a result, Defendants' acts and conduct in making and

1 disseminating the advertising and statements before the public in California were false and
2 misleading within the meaning, and in violation, of California Business & Professions Code §
3 17500.

4 79. Further, to the extent it is found that Defendants conditioned the sale of their
5 computers with the sale of a service contract, Defendants are in breach of California Business &
6 Professions Code § 17509(a) for failing to clearly and conspicuously disclose and list the price for
7 the onsite service contract separate and apart from the price of the computer in their advertising
8 and statements when soliciting purchasers for Dell computers.

9 80. In doing the acts alleged above, Defendants have carried out a scheme designed to
10 deliberately cheat large numbers of consumers out of individually small sums of money. As a
11 proximate result of Defendants' actions, Plaintiffs and members of the Class are entitled to
12 injunctive relief, restitution of all moneys wrongfully obtained from Plaintiffs and members of the
13 Class, and disgorgement.

14 **FOURTH CAUSE OF ACTION**

15 **FOR UNFAIR, DECEPTIVE, AND UNLAWFUL BUSINESS**

16 **PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§**

17 **17200, *et seq.***

18 **(Plaintiffs, on Behalf of Themselves and All Class Members, Against All Defendants)**

19 81. Plaintiffs reallege and incorporate by reference all of the paragraphs above into this
20 claim for relief with the same force and effect as though these paragraphs were set forth at length
21 herein.

22 82. Defendants' actions alleged above, such as their failing to disclose the onsite
23 service contract charge or that the onsite service was optional for the first year, constitute unlawful
24 and unfair and fraudulent business practices and acts under California Business and Professions
25 Code §§ 17200, *et seq.* These actions and business practices are forbidden by law, create harm
26 that outweighs any benefit to customers, and are likely to deceive members of the public.

27 83. In doing the acts alleged above, Defendants have carried out a scheme designed to
28 deliberately cheat large numbers of consumers out of individually small sums of money.

1 Plaintiffs have suffered injury in fact and have lost money in at least the amount they
 2 unknowingly paid for the first year service contract, as a result of Defendants' unfair competition
 3 and deceptive advertising as defined in Business and Professions Code §§ 17200, *et seq.*

4 84. In addition, the acts and practices of Defendants are unlawful because they violate
 5 one or more of the following statutes and regulations:

6 a) California Business and Professions Code §§ 17500, *et seq.*, and § 9855.5.
 7 as set forth above.

8 b) Consumers Legal Remedies Act, Cal. Civil Code §§ 1750, *et seq.*, as set
 9 forth above.

10 c) Song-Beverly Consumer Warranty Act, Cal. Civil Code §§ 1790, *et seq.*, as
 11 set forth above.

12 d) 16 C.C.R. § 2720 of the California Administrative Code, which provides
 13 that "[n]o service dealer shall, in filling out an estimate or an invoice, withhold therefrom or insert
 14 therein any statement or information where the tendency or effect thereby is to mislead or deceive
 15 customers, prospective customers, or the consuming public."

16 85. Defendants' acts and practices as described herein have deceived and/or are likely
 17 to deceive members of the consuming public and reasonable consumers, including Plaintiffs and
 18 Class members.

19 86. Unless Defendants are enjoined from continuing to engage in the unlawful, unfair,
 20 fraudulent, untrue and deceptive acts and practices described herein, Plaintiffs and members of the
 21 Class will continue to be damaged by Defendants' unfair business practices.

22 87. Defendants, through their acts of unfair competition and unfair, deceptive, untrue
 23 and misleading advertising, have acquired money from Plaintiffs and Class members. Thus,
 24 Plaintiffs and plaintiff Class members request that this Court restore this money to them, enjoin
 25 Defendants from continuing to violate California Business & Professions Code §§ 17200, *et seq.*,
 26 and order disgorgement.

27 **WHEREFORE**, Plaintiffs request the following relief, on behalf of themselves and on
 28 behalf of the Class:

Respectfully submitted,

By: /s/
Gretchen Carpenter
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

DATED: October 30, 2009

Respectfully submitted,

STRANGE & CARPENTER

By:

/s/

Gretchen Carpenter
Attorneys for Plaintiffs

EXHIBIT 1

This is your **ACKNOWLEDGMENT**

Page: 1 of 2

FID Number: 74-2616805
 Sales Rep: MICHAEL HODGKISS
 For Sales: (800)695-8133
 Sales Fax: (877)204-8109
 For Customer Service: (800)695-8133
 For Technical Support: (800)695-8133
 Dell Online: <http://www.dell.com>

Customer Number: 034441005
 Purchase Order: NAONLINECUST
 Order Number: 461602352
 Order Date: 09/05/03

Invoice Number: 461602352

Invoice Date: 09/12/03
 Payment Terms: VISA
 Shipped Via: LTL 5 DAY OR LESS
 Waybill Number: ZZ3070050933574

23 01 V 01 01 N

SOLD TO:
 #BWNHKKPV
 #0344 4100 55# 00009035 1 MB 0.309 01
 VIVIAN FIORI
 FIORI VIVIAN

SHIP TO:
 VIVIAN FIORI
 FIORI VIVIAN



041125601090350001



PLEASE REVIEW IMPORTANT TERMS & CONDITIONS ON THE REVERSE SIDE OF THIS INVOICE

Order	Shipped	Item Number	Description	Unit	Unit Price	Amount
1	1	221-2530	Dimension 4600 Series, Intel Pentium 4 Processor at 2.80GHz with HT Technology	EA	1,494.00	1,494.00
1	1	311-9002	512MB DDR SDRAM at 400MHz	EA	0.00	0.00
1	1	310-1696	Dell Enhanced Multimedia PS/2 Keyboard	EA	0.00	0.00
1	1	320-0578	17 in (17 in viewable) E171FPB Flat Panel Display	EA	0.00	0.00
1	1	320-0735	128MB DDR NVidia GeForce FX 5200 graphics card	EA	0.00	0.00
1	1	340-3274	80GB 7200 RPM Ultra ATA Hard Drive	EA	0.00	0.00
1	1	340-8446	USB Memory Key, 64MB, Dimension	EA	0.00	0.00
1	1	340-8688	No Floppy Drive Requested	EA	0.00	0.00
1	1	313-7222	Dell Application Back-up CD, Factory Install	EA	0.00	0.00
1	1	420-1921	Microsoft Windows XP Home Edition, Service Pack 1, English	EA	0.00	0.00
1	1	412-0409	Generic Dimension Dell Support	EA	0.00	0.00
1	1	310-4037	Dell USB Optical Mouse	EA	0.00	0.00
1	1	430-0472	10/100/1000 Networking Card	EA	0.00	0.00
1	1	313-1313	56K PCI Data Fax Modem for Windows	EA	0.00	0.00
1	1	313-1476	48X Max Variable CD-ROM Drive, Factory Install	EA	0.00	0.00
1	1	313-2758	Integrated Audio	EA	0.00	0.00
1	1	313-2198	No Speaker Requested	EA	0.00	0.00
1	1	410-0144	Symantec Norton Antivirus 2003 CD With Documentation, Retail Version	EA	0.00	0.00
1	1	365-1234	Readyware Installation Fee	EA	0.00	0.00
1	1	412-0298	MusicMatch 7.1x Basic	EA	0.00	0.00
1	1	412-0271	Dell Picture Studio Image Expert Standard, Dimension	EA	0.00	0.00
1	1	412-0273	Dell Picture Studio Paint Shop Pro Try and Buy, Dimension	EA	0.00	0.00
1	1	420-3224	Broadband Icon for Inspiron	EA	0.00	0.00
1	1	412-0445	AOL 8.0 PUB	EA	0.00	0.00
1	1	412-0360	Real Network RealOne Player Basic, Version 6, US English	EA	0.00	0.00
1	1	412-0402	Word Perfect Office 11	EA	0.00	0.00
1	1	950-1260	*Type 3- Third Party At Home Service, 24x7 Technical Support, Initial Year	EA	0.00	0.00
1	1	950-3337	*1 Year Limited Warranty	EA	0.00	0.00
1	1	950-9797	*No Warranty, Year 2 and 3	EA	0.00	0.00
1	1	412-0360	Soft Contracts - Banctec	EA	0.00	0.00
1	1	970-1017	*NO WARRANTY COMPLETE CARE	EA	0.00	0.00
1	1	462-1662	48x/24x/48x CD-RW Drive	EA	0.00	0.00

Ship. &/or Handling	\$	0.00
Subtotal	\$	1,494.00
Taxable:	Tax	
\$ 1,494.00	\$	123.28
Invoice Total	\$	1,617.28
VISA	\$	1,617.28
	\$	
Balance Due	\$	0.00

Service contract may be subject to sales tax.
 on-site or other service covers Dell system hardware only.
 PLEASE KEEP ORIGINAL BOX FOR ALL RETURNS. COMPREHENSIVE ONLINE CUSTOMER CARE
 FORMATION AND ASSISTANCE IS A CLICK AWAY AT WWW.DELL.COM/PUBLIC-ECARE TO
 ANSWER A VARIETY OF QUESTIONS REGARDING YOUR DELL ORDER.



This is your ACKNOWLEDGMENT

Page: 2 of 2

FID Number: 74-2616805
 Sales Rep: MICHAEL HODGKISS
 For Sales: (800)695-8133
 Sales Fax: (877)204-8109
 For Customer Service: (800)695-8133
 For Technical Support: (800)695-8133
 Dell Online: <http://www.dell.com>

Customer Number: 034441005
 Purchase Order: NAONLINECUST
 Order Number: 461602352
 Order Date: 09/05/03

Invoice Number: 461602352

Invoice Date: 09/12/03
 Payment Terms: VISA
 Shipped Via: LTL 5 DAY OR LESS
 Waybill Number: ZZ3070050933574

23 01 V 01 01 N

SOLD TO:

VIVIAN FIORI
 FIORI VIVIAN

SHIP TO:
 VIVIAN FIORI
 FIORI VIVIAN

PLEASE REVIEW IMPORTANT TERMS & CONDITIONS ON THE REVERSE SIDE OF THIS INVOICE

Order	Shipped	Item Number	Description	Unit	Unit Price	Amount
1	1	460-9055	DHS Instant \$100 Off Discount(s) and/or coupons	EA	0.00	0.00
		System Service Tags	B3YNG31			

THIS IS NOT
 AN INVOICE

EXHIBIT 2

This is your ACKNOWLEDGEMENT

Page 1 of 2

FID Number: 74-2616805
 Sales Rep: JORGE CALDERON
 For Sales: (800) 695-8133
 Sales Fax: (877) 204-8109
 Customer Service: (800) 695-8133
 Technical Support: (800) 695-8133
 Dell Online: <http://www.dell.com>

Customer Number: 41742381
 Purchase Order:
 Order Number: 694349854
 Order Date: 03/23/04

Invoice Number: 694349854

Invoice Date: 04/09/04
 Payment Terms: VISA
 Shipped Via: LTL 5 DAY OR LESS
 Waybill Number: 6AT9694214207974

23 01 V 01 01 N

SOLD TO:
 VIVIAN FIORI
 VIVIAN FIORI

SHIP TO:
 VIVIAN FIORI
 VIVIAN FIORI

Order	Shipped	Item Number	Description	Unit	Unit Price	Amount
1	1	221-3725	Dimension 4600 Series, Intel Pentium 4 Processor at 2.6GHz	EA	770.00	770.00
1	1	462-1656	512MB DDR SDRAM at 333MHz	EA	0.00	0.00
1	1	310-1582	Dell Quiet Key Keyboard	EA	0.00	0.00
1	1	462-8471	17 in (17 in viewable) E172FPB Flat Panel Display	EA	0.00	0.00
1	1	320-2870	Integrated Intel Extreme Graphics 2	EA	0.00	0.00
1	1	341-0834	80GB 7200 RPM Ultra ATA Hard Drive	EA	0.00	0.00
1	1	341-0217	USB Memory Key, 84MB	EA	0.00	0.00
1	1	340-8688	No Floppy Drive Requested	EA	0.00	0.00
1	1	313-7222	Dell Application Back-up CD, Factory Install	EA	0.00	0.00
1	1	420-1921	Microsoft Windows XP Home Edition, Service Pack 1, English	EA	0.00	0.00
1	1	412-0409	Generic Dimension Dell Support	EA	0.00	0.00
1	1	310-4037	Dell USB Optical Mouse	EA	0.00	0.00
1	1	430-0472	10/100/1000 Networking Card	EA	0.00	0.00
1	1	313-2279	56K PCI Data Fax Modem	EA	0.00	0.00
1	1	462-6817	48X Max CD-RW Drive	EA	0.00	0.00
1	1	313-0917	16X DVD-Rom Drive	EA	0.00	0.00
1	1	430-0594	Cyberlink Software Decoding for DVD Drives	EA	0.00	0.00
1	1	462-7810	Info, 16X DVD ROM and 48X CDRW	EA	0.00	0.00
1	1	313-1932	SoundBlaster Live! with 5.1 Support	EA	0.00	0.00
1	1	313-6010	Factory Installed Audio	EA	0.00	0.00
1	1	313-2201	AS500 Sound Bar Speaker with Power Adapter for E152, E172FP Flat Panel Display	EA	0.00	0.00
1	1	365-1234	Readyware Installation Fee	EA	0.00	0.00
1	1	410-0632	Symantec Norton Antivirus 2004 CD With Documentation, Retail Version, Factory Installed	EA	0.00	0.00
1	1	412-0516	Dell Jukebox powered by Music Match	EA	0.00	0.00

PLEASE KEEP ORIGINAL BOX FOR ALL RETURNS. COMPREHENSIVE ONLINE CUSTOMER CARE INFORMATION AND ASSISTANCE IS A CLICK AWAY AT WWW.DELL.COM/PUBLIC-ECARE TO ANSWER A VARIETY OF QUESTIONS REGARDING YOUR DELL ORDER.

Ship. &/or Handling	\$	90.00
Subtotal	\$	860.00
Taxable:	Tax	
\$ 860.00	\$	62.33
Invoice Total	\$	922.33
VISA	\$	922.33
	\$	
Balance	\$	0.00

This is your ACKNOWLEDGEMENT

Page 2 of 2

FID Number: 74-2616805
 Sales Rep: JORGE CALDERON
 For Sales: (800) 695-8133
 Sales Fax: (877) 204-8109
 Customer Service: (800) 695-8133
 Technical Support: (800) 695-8133
 Dell Online: <http://www.dell.com>

Customer Number: 41742381
 Purchase Order:
 Order Number: 694349854
 Order Date: 03/23/04

Invoice Number: 694349854
 Invoice Date: 04/09/04
 Payment Terms: VISA
 Shipped Via: LTL 5 DAY OR LESS
 Waybill Number: 6AT9694214207974

23 01 V 01 01 N

SOLD TO:
 VIVIAN FIORI
 VIVIAN FIORI

SHIP TO:
 VIVIAN FIORI
 VIVIAN FIORI

PLEASE SEE IMPORTANT TERMS & CONDITIONS ON THE REVERSE SIDE OF THIS INVOICE

Order	Shipped	Item Number	Description	Unit	Unit Price	Amount
1	1	412-0621	Dell Photo Album Standard	EA	0.00	0.00
1	1	420-3224	Broadband Icon for Inspiron	EA	0.00	0.00
1	1	412-0625	Dell/My Way Home Page	EA	0.00	0.00
1	1	412-0590	AOL 9.0 EPP	EA	0.00	0.00
1	1	412-0380	Real Network RealOne Player Basic, Version 8, US English	EA	0.00	0.00
1	1	412-0395	Word Perfect Productivity Pack	EA	0.00	0.00
1	1	412-0551	Money 2004 Standard Version for Dimension	EA	0.00	0.00
1	1	412-0555	Microsoft Encyclopedia, 2004 for Dimension	EA	0.00	0.00
1	1	950-1260	*Type 3- Thrd Party At Home Service, 24x7 Technical Support, Initial Year	EA	0.00	0.00
1	1	950-3337	*1 Year Limited Warranty	EA	0.00	0.00
1	1	950-9797	*No Warranty, Year 2 and 3	EA	0.00	0.00
1	1	412-0360	Soft Contracts - BancTec	EA	0.00	0.00
1	1	420-4125	Turbo Tax 2003	EA	0.00	0.00
1	1	412-0518	Dell Media Experience	EA	0.00	0.00
1	1	462-1590	DHS Instant \$150 Off	EA	0.00	0.00
		System Service Tags	9WNRN41	EA	0.00	0.00